

ADDENDUM TO
RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 95-00708.

DEC 7 1998

COUNSEL:

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His records be corrected to reflect that he was retired for disability with a 30 percent compensable rating, rather than a 10 percent compensable rating.

RESUME OF THE CASE:

The applicant is a former Regular Air Force officer who was honorably relieved from active duty on 30 Sep 94 and retired in the grade of colonel, effective 1 Oct 94. He had served 30 years, 3 months, and 3 days on active duty.

On 17 Oct 96, the Board considered an appeal pertaining to the applicant, in which he requested that his records be corrected to reflect that he was retired for disability with a 30 percent compensable rating, rather than retired for length of service. The Board recommended that his records be corrected to reflect that he was retired by reason of physical disability, rather than for length of service, with a compensable rating of 10 percent. The recommendation of the Board was approved by the Director, Air Force Review Board's Agency on 9 Dec 96 (see AFBCMR 95-00708, with Exhibits A through F).

APPLICANT CONTENDS THAT:

It appears to him that the decision by the Board was based on incorrect information from the Department of Veterans Affairs (DVA). Furthermore, the decision did not address his chief complaint of chronic deep thrombosis with resultant chronic pulmonary emboli which is VA Diagnostic Code 7121. It instead addressed varicose veins under 7120. He believes his appeal should be reviewed again to determine if the Air Force Compensable rating should be at least 30 percent as he originally

contended. The DVA has determined it to be 60 percent disability for code 7121 alone.

Applicant's complete submission is at Exhibit G.

AIR FORCE EVALUATION:

Pursuant to the Board's request, the BCMR Medical Consultant, reviewed the applicant's most recent submission and recommended denial. In the Medical Consultant's opinion, no change in the records was warranted. He indicated that while the DVA has altered its disability ratings in this case as it is empowered to do, such changes cannot be construed to indicate the same degree of disability was found at the time of permanent active duty disposition. Evidence of record indicates the applicant received fair and equitable consideration and compensation for his degree of unfitness, and no additional award is indicated as far as his disability retirement is concerned. According to the Medical Consultant, further review of this case without substantive evidence of an error in the disability retirement award compensation would seem to be unwarranted.

A complete copy of the Medical Consultant's evaluation is at Exhibit H.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In his detailed response, the applicant indicated that it appears that the BCMR Medical Consultant has mistakenly assumed that his claim for higher Air Force disability compensation was because the DVA reevaluated him for a second time and increased his DVA disability rating supposedly because his condition had worsened. However, this is not the case.

According to the applicant, it was only **by** chance that his health deteriorated beginning two years prior to his planned longevity retirement. The appearance was that because he was due to retire soon anyway, the Air Force could ignore the severity of his medical condition. **If** he had **been** made to medically retire after his first episode of deep vein thromboses and pulmonary emboli in Jan 73, there would have been no question that he would have been awarded at least 30 percent disability. However, the Air Force physicians at that time said this condition was a "fluke" at his age at the time and would not occur again. He was only maintained on anticoagulant therapy for three months. He was unaware that if he had remained on anticoagulants longer, he probably would have been medically retired at that time. In fact over the next 20 years there were at least two other episodes for which he was hospitalized that were more than likely other episodes of passing pulmonary emboli. Unfortunately, this

diagnosis was never explored and instead his heart was the focus of attention. According to the applicant, he has provided additional documentation not previously reviewed by the Board which he believes will strengthen his case.

Applicant's complete response and additional documentary evidence are attached at Exhibit J.

THE BOARD CONCLUDES THAT:

1. In earlier findings, we determined that sufficient evidence existed to support a finding of unfitness, but was not persuaded that the applicant's condition at the time of his separation warranted a compensable rating of 30 percent. Accordingly, the applicant's records were corrected to reflect that he was retired by reason of physical disability with a compensable rating of 10 percent, as recommended by the Air Force office of primary responsibility (AFMPC/DPMAD). The applicant is again requesting that his records be corrected to show that he was awarded a 30 percent rating. We have reviewed his most recent submission. However, we agree with the opinion and recommendation of the BCMR Medical Consultant and adopt his rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence which shows to our satisfaction that the applicant was not fairly and appropriately rated, we find no compelling basis to recommend granting the relief sought in this application.

2. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:


The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 1 Sep 98, under the provisions of AFI 36-2603:

Mr. Benedict A. Kausal IV, Panel Chair
Mr. Terry A. Yonkers, Member
Mr. Patrick R. Wheeler, Member

The following additional documentary evidence was considered:

Exhibit G. Letter, applicant, dated 17 Dec 96, w/atchs.
Exhibit H. Letter, BCMR Medical Consultant, dated 17 Jul 98.
Exhibit I. Letter, AFBCMR, dated 3 Aug 98.
Exhibit J. Letter, applicant, dated 15 Aug 98, w/atchs.


BENEDICT A. KAUSAL IV
Panel Chair